## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID PEPE WILSON,

Plaintiff,

Case No. 3:07-cv-293-KRG-KAP

SHARON M. BURKS, et al.,

Defendants

## MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C.§ 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on March 20, 2009, docket no. 50, recommending that defendant Burks' motion for summary judgment, docket no. 37, be granted.

The parties were notified that pursuant to 28 U.S.C.§ 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation. Plaintiff filed objections, docket no. 52, which repeat the allegations of the complaint and motion to reconsider. Plaintiff does not produce or even point to any evidence of any specific instance in which defendant failed to enforce the no-smoking policy, he merely reiterates the allegation that there are at times violations of the no-smoking policy.

Upon de novo review of the record of this matter, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this H day of April, 2009, it is

ORDERED that defendant's motion for summary judgment, docket no. 37, is granted. The plaintiff's complaint is dismissed. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

KIM R. GIBSON,

UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

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